Court No. 2

In the High Court of Uttaranchal at Nainital.

First Appeal From Order No. 1586 of 2001.
(Old No.450 of 1995)

National Insurance Company Ltd.,
through its Administrative Officer,
Divisional Officer 25 M.G.Marg, Allahabad.
..... Opp.party/appellant

Versus

(1) Smt.Raj Kumari wife of Sri Chhotey Lal,
(2) Subhash Chandra S/o Sri Chhotey Lal,
(3) Sonu Lal (minor) S/o Sri Chhotey Lal,
(4) Km.Suneeta (minor) D/o Sri Chhotey Lal,
(5) Raj Guru (minor) S/oSri Chhotey Lal,
(6) Beeru (minor) S/o Sri Chhotey Lal,
(7) Bhoj Raj (minor) S/o Sri Chhotey Lal,
(8) Phool Chandra (minor) S/o Sri Chhotey Lal,
All residents of Ward No.10, Nai Basti,
Tanakpur, District-Nainital,

.....Claimants/Respondents.

(9) Nazir Ahmad S/o Sri Vasir Ahmad,
Truck Owner, R/o Simalgari Bazar,
Pithoragarh.

.....Opp.party No.1/Respondent

Sri Lalit Belwal, learned counsel for the appellant,

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Dated: 21th Aug., 2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the appellants under Section 173 of the Motor Vehicles Act, 1988 against the impugned judgment and order dated 09.02.1995 passed by Motor Accident Claims Tribunal, Pithoragarh *(hereinafter referred to as the Tribunal)* in Motor Accident Claim Case No. 102 of 1991.

Brief facts giving rise to this appeal are that deceased Chhote Lal was travelling on 8.5.1991 in Truck No. UP03-322 and carrying vegetables etc. in that truck.

When the aforesaid truck reached on the road coming from Tanakpur-Pithoragarh and at Mahaun, the said truck fell into a deep pit from the road. Due to fall of the said truck, Chote Lal died at the spot. The said truck was being driven by its driver rashly and negligently who also died at the spot. It was alleged that deceased Chhotey Lal was aged about 45 years at the time of accident and he was earning Rs. 1500/- per month by business of selling vegetables etc. The aforesaid Truck No. UP 03-322 was owned by Nazir Ahmad-Opp.party No.1 and it was insured with the Opp.party No.2- National Insurance Company. The claimants, filed claim petition for Rs. 3,90,000/- by way of compensation.

The Opp.parties contested the case and filed their written statements separately. The Opp.party-owner pleaded in his written statement that the driver himself died in the said accident and the vehicle aforesaid was comprehensively insured with the National Insurance Company. The Insurance Company pleaded that at the time of the alleged accident the driver was not holding a valid driving licence to drive heavy vehicles over hills roads. On the pleadings of the parties, the Tribunal framed the following issues:-

(1) Whether the accident took place on 8.5.1991 due to rash and negligent driving of vehicle No. UP 03/322 driven by the driver?
(2) Whether the documents of the vehicle were valid and in order or not?
(3) Whether there has been violation of insurance policy and its terms and conditions?
(4) To what amount, if any, is the claimants are entitled and from whom?

The learned Tribunal after recording the oral and documentary evidence decided all the issues in favour of the claimants and allowed the claim petition for award of

Rs. 2,88,000/- by way of compensation alongwith interest at the rate of 10% per annum from the date of filing of the petition upto the date of actual payment against the Opp.party No.2- National Insurance Company. Feeling aggrieved, the Insurance Company has come up in this appeal.

Learned counsel for the Insurance Company pressed this appeal only on the ground that the drive of the offending vehicle was not holding a valid driving licence to drive mini truck at the time of accident and the copy of the driving licence of the driver (Ex.A-6) produced before the Tribunal showed that the driving licence was valid for driving only light motor vehicles. The offending vehicle No.UP 03-322 was a mini Truck which was not a light motor vehicle and the Tribunal has committed manifest error in holding that the driver was holding a valid driving licence at the time of accident. For the sake of argument if it is found true that the driver of the offending truck was holding a driving licence, which was meant for light motor vehicles, but only on that count, the Insurance Company cannot be absolved from its liability to pay the compensation. We are fortified in our view by the verdict of the Apex Court in the case ***National Insurance company Limited versus Swaran Singh and others, reported in (2004) 3 Supreme Court Cases, page 297*** in which the Apex Court has elaborately discussed all the relevant provisions of Section 149(2)(a)(ii), 149(7), 168 and 174 of the Motor Vehicles Act, 1988 and paragraph 110 of the said case is fully applicable to the contention as raised by the learned counsel for the appellant. While dealing with the relevant provisions of law, as may be applicable to the facts of the present case, the Hon'ble Supreme Court has held in para 71 and 110-The provisions of sub-sections (4) and (5)

of Section 149 of the Act, may be considered as the liability of the Insurer to satisfy the decree, at the first instance-The provisions contained in sub-section (4) with 'proviso' thereunder and sub-section (5), which are intended to cover specified contingencies mentioned therein to enable the insurer to recover the amount paid under the contract of insurance, on behalf of the insured, can be taken recourse of by the Tribunal and be extended to the claims and the defences of the insurer against the insured, by relegating them to the remedy before regular court, in cases, where on given facts and circumstances, adjudication of their claims inter se might delay the adjudication of the claims of the victims. Following the ratio of the pronouncement of the Apex Court, we are of the opinion that the **Insurance Company must first satisfy the award before the learned Tribunal and then can file its objection, if it so desires, before the executing court for redressal of its grievances about the dispute between the insurer and the insured by that court/tribunal in accordance with the provisions of the Act.** However, nothing has been shown to us on behalf of the appellant- Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

Accordingly, the appeal fails on merits.

The appeal is dismissed with the aforesaid observations. The impugned judgment and award is upheld. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh